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**DEC 20 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Hennick et al. :  
Application No. 09/312,479 : DECISION ON PETITION  
Filed: 17 May, 1999 :  
Atty Docket No. 283\_237.10CPA :

This is a decision on the petition filed on 27 July, 2005, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

The application became abandoned on 2 July, 2005, for failure to timely file a proper Appeal Brief in response to the Notification

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

of Non-Compliant Appeal Brief mailed on 1 June, 2005, which set a one (1) month shortened period for reply. On 12 July, 2005, a communication noting that the appeal was dismissed for failure to file a proper Appeal Brief, and the application abandoned, was mailed.

The petition is dismissed because the appeal brief filed with the petition on 25 July, 2005, is defective. A copy of a Notification of Non-Compliant Appeal Brief (37 CFR 41.37) is attached for petitioners' reference in filing a proper brief.

Petitioner should file a renewed petition accompanied by a proper Appeal Brief in compliance with 37 CFR 41.37

Further correspondence with respect to this matter should be addressed as follows:

By mail:            Mail Stop Petition  
                     Commissioner for Patents  
                     P.O. Box 1450  
                     Alexandria, VA 22313-1450

By FAX:            (571) 273-8300  
                     Attn: Office of Petitions

By hand:           Customer Service Window  
                     Mail Stop Petition  
                     Randolph Building  
                     401 Dulany Street  
                     Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl:            Notification of Non-Compliant Appeal Brief